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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,192	02/18/2004	Floyd Backes	160-017	1760
34845	7590	10/27/2005	EXAMINER	
STEUBING AND MCGUINNESS & MANARAS LLP			BEAMER, TEMICA M	
125 NAGOG PARK				
ACTON, MA 01720			ART UNIT	PAPER NUMBER
			2681	
DATE MAILED: 10/27/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/781,192

Applicant(s)

BACKES ET AL.

Examiner

Temica M. Beamer

Art Unit

2681

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☒ Claim(s) 2,3 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Objections*

1. Claims 1-3 are objected to because of the following informalities: In **claim 1**, use lower case "l" for each occurrence of the term "Logic". In **claim 2**, line 1, change "claim 2" to --claim 1--. In **claim 3**, change "claim 3" to --claim 1-- or to --claim 2--.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1 and 3 are rejected under 35 U.S.C. 102(e) as being anticipated by Dent et al (Dent), U.S. Patent No. 6,542,716.

Regarding claim 1, Dent discloses an apparatus for use by an access point in a wireless networking communications environment comprising logic for scanning a plurality of radio frequency channels during a scan interval, logic for receiving messages from other access points on the plurality of radio frequency channels during the scan interval (col. 4, lines 12-23), logic for maintaining a channel map having an entry for

each of the plurality of radio frequency channels, and if one or more messages was received on a channel, the corresponding entry further including an AP-ID for at least one of the access points that sent a message on the channel (col. 9, line 62-col. 10, line 2, col. 13, line 31-col. 4, line 2); logic for selecting a channel from the channel map; logic for transmitting messages on the selected channel during a claim interval, logic for receiving messages from other access points on the selected channel during the claim interval, logic for ascertaining whether the apparatus should commence communications with other wireless devices on the selected channel based upon characteristics of the messages received on the channel (col. 13, line 43-col. 14, line 2).

***Allowable Subject Matter***

4. Claims 2 and 3 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and once proper dependency is determined.

5. The following is a statement of reasons for the indication of allowable subject matter: Prior art fails to suggest or render obvious logic which selects a channel having either no AP-ID or an AP-D that has the lowest stored power level.

Prior art further fails to suggest or render obvious logic for evaluating the power level of messages received on a selected channel, and if the power level of messages received on the selected channel is below a threshold, the logic for

ascertaining indicates that the apparatus should commence communications with other wireless devices on the selected channel .

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ahmadi et al, U.S. Patent No. 6,597,671.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Temica M. Beamer whose telephone number is (571) 272-7797. The examiner can normally be reached on Monday-Thursday (alternate Fridays) 7:00am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Feild can be reached on (571) 272-4090. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Art Unit: 2681

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Temica M. Beamer  
Primary Examiner  
Art Unit 2681

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*Temica M. Beamer*  
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PRIMARY EXAMINER  
10/16/05